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May 30, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: The Lincoln Telephone and Telegraph Company
CC Docket No. 96-98

Dear Mr. Caton:

On behalf of the Lincoln Telephone and Telegraph Company ("Lincoln"), enclosed for filing you will find an original and sixteen copies of Lincoln's reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding. Date-stamped acknowledgment of this filing is requested. Any questions concerning these comments should be directed to the undersigned.

Sincerely,

Robert A. Mazer
Albert Shuldiner
Tom Sikora

Counsel for the Lincoln
Telephone and Telegraph Company

cc: Ms. Janice Myles (1 paper copy and 1 diskette)
ITS (1 paper copy)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

REPLY COMMENTS OF THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY

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May 30, 1996

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

Page No.

SUMMARY

Lincoln hereby replies to the comments made in the above captioned proceeding. Lincoln believes that the Commission should implement local competition in a fair and equitable manner. It therefore urges the Commission to avoid premature rule-making and create only the basic rules to foster fair interconnection in the local market.

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In the Matter of	)	
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REPLY COMMENTS
OF
THE LINCOLN TELEPHONE AND TELEGRAPH COMPANY

I. Introduction.

The Lincoln Telephone and Telegraph Company ("Lincoln"), by its attorneys, respectfully submits the following statements in reply to the comments filed in the above proceeding.[1/]

II. The Commission should promote a simple process that fosters competition.

Good faith, and reasonable efforts at rule-making that look to the future will allow carriers to engage in healthy and vigorous competition. This is a dynamic and changing environment, and the Commission should continue to recognize it as such by

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1/ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, *Notice of Proposed Rulemaking* (released April 19, 1996)("Notice").

creating rules on interconnection that can grow with that environment. Lincoln is not alone in desiring the freedom to compete on a level playing field. Sprint states "...[T]he Commission should concentrate initially on the key issues before it, and further refine its rules on an ongoing basis in light of experience and changing market conditions."[2/] Sprint, also, urges the Commission to avoid premature rulemaking by allowing the complaint process to function as designed and only then be considered for inclusion in the rules.[3/]

Lincoln believes the Commission should establish interconnection at local and tandem switches. Individual states can resolve any additional interconnection points. The following guidelines are suggested for requesting additional points: (1) the requesting carrier must define the point; (2) Incumbent Local Exchange Company ("ILEC") has the burden of proof regarding technical feasibility; and, (3) once the point is available, any ILEC using like technology, including the required support systems, must also provide such interconnection. At least one IXC believes guidelines such as these are a good starting point.[4/] These guidelines also would allow the Commission to conserve its resources for more pressing needs

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2/ *See* Sprint at vi.

3/ *See* Sprint at 11.

4/ *Id* at 14-15.

A. The Act[5/] does not mandate extensive unbundling.

Lincoln urges the Commission to reject MCI's definition of technical feasibility.[6/] MCI's apparent intention is to dismember the incumbent's network without considering the serious risk to network reliability. MCI, understandably biased toward the interests of Competitive Local Exchange Company ("CLEC"s), would tear apart an ILEC's network using only one criterion, namely that it is profitable and convenient for MCI. MCI would force the ILECs to engage in excessive, inefficient, and unsound unbundling of the network. Through this excessive unbundling MCI would gain an unfair competitive advantage over the ILECs without engaging in facilities based competition, a competition based on quality and price, as envisioned by Congress in the Act. Lincoln believes that technical feasibility must recognize the differences in the capabilities of the operational support and cost systems of a particular ILEC. Unbundling according to MCI's definition is contrary to Congress's intentions as expressed in the Act.

Contrary to MCI's desire to have all the piece parts of the network defined now and forever, Lincoln believes that the Commission should only adopt minimal unbundling requirements at this time and let a bona fide request process account for technological progress. It is practically impossible to account for every possible future technological development. Over specification of network elements would not take

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5/ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 ("Act").

6/ *See* MCI at 12.

advantage of the market's ability to cope with the highly dynamic nature of today's telecommunication technology.

Lincoln agrees with the tentative conclusion of the Notice that unbundling of the network into local loop, switching capability, local transport and special access are technically possible.[7/] The Commission should not prescribe any additional points of interconnection. If carriers wish interconnections beyond these minimum standards, negotiations are the more efficient mechanism. Lincoln believes the level of granularity in unbundling wanted by MCI,[8/] AT&T[9/] and MFS[10/] should not be adopted by the Commission as the national standard. This level of granularity is not acceptable for small and mid-size companies without jeopardizing the soundness of their networks. Small- and mid-size companies may not have enjoyed the economies of scale that would have allowed them to invest in as sophisticated Operational Support Systems ("OSS") as the larger companies. These sophisticated OSS need to be created to support unbundled network elements and to ensure network reliability. There may be additional systems that will need to be created.

Further negotiations between both parties may still be required even when unbundling has been agreed to by another LEC with identical switch hardware and

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7/ *See* Notice, ¶¶94, 98, 104.

8/ *See* MCI at 16.

9/ *See* AT&T at 16-27.

10/ *See* MFS at 46.

software loads. Changes may be required in hardware and software components if the unbundled feature was not planned for in the switch configuration originally supplied by the vendor. These changes may cause the expenditure of additional effort and expense which would need to be detailed in the negotiation process.

Sub-loop unbundling should not be mandated by the Commission because it would threaten the integrity of the network and its signaling systems as mentioned by the Department of Defense ("DOD") throughout its comments.[11/]

Lincoln does not see a problem with using today's technical, provisioning, and service standards to get local competition started. Sprint also makes the same point. "Sprint sees no need at this time to lay out explicit provisioning and service intervals, technical standards and other safeguards to guard against discrimination."[12/]

B. Pricing standards for unbundled network elements must not be confiscatory.

Lincoln agrees with USTA's position that the ILECs must be allowed to recover their joint, common, and embedded costs.[13/] Rates which do not recover these costs will be confiscatory.

The Hatfield study should not be adopted as the pricing standard

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11/ *See* generally DOD Comments.

12/ *See* Sprint at 22.

13/ *See* USTA at 36-41.

The Commission should not adopt the Hatfield study's[14] version of TSLRIC as a national standard[15] for the following reasons:

1. The Hatfield version of TSLRIC does not allow for the recovery of costs it defines as common, and embedded. Rates based on Hatfield's TSLRIC would be confiscatory.
2. The Hatfield study was financed by CLECs and therefore its impartiality is open to question.
3. The Hatfield version of TSLRIC underestimates costs because it is based not on an actual network but on idealized network that will never exist.
4. No data from small and mid-size companies were used in the Hatfield study. The Hatfield study does not consider the effects of scope and scale. It does not consider the effect of companies size on the size of their joint, common, and embedded costs. Lincoln believes that the Hatfield study does not provide a cost methodology that is appropriate for small and mid-size companies.
5. The Hatfield study does not take into account any risk associated with network investments. Lincoln agrees with Hausman's conclusions that TSLRIC as defined by Hatfield, underestimates costs.[16] It does not

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[14] *See* MCI supplement: "The Cost of Basic Network Elements; Theory, Modeling and Policy Implications." Hatfield Associates, Inc., March 29, 1996.

[15] *See* MCI at 68-72.

[16] *See* Hausman affidavit.

include any risk premium associated with economic depreciation due to the technological progress or with uncertainty due to fluctuations in demand and in cost of capital.

IV. Price ceilings and floors.

Lincoln believes the Commission can consider adopting TSLRIC as the price floor but should definitely not adopt it as the price ceiling. MCI's proposal to make TSLRIC a price ceiling for unbundled elements[17/] is economically unviable. Economists would agree that pricing below Marginal Cost is as inefficient as pricing above Marginal Cost. MCI's proposition to make TSLRIC a ceiling comes not from efficiency considerations but considerations of corporate profits.

V. Resale below cost.

Lincoln opposes the request of MCI[18/] to allow the resale of services priced below costs. MCI seems to have an inconsistent focus on cost issues: when they have an opportunity to buy cheap they are not as pro-cost as they are in regard to unbundled elements. Lincoln understands MCI's desires to get a share of local markets for free, but Lincoln does not think that selling below cost would encourage the facilities based competition intended by the Act.

Pricing below cost can lead to several economic problems such as: (1) discouraging competitive carriers from purchasing unbundled network elements priced

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17/ *See* MCI at iii.

18/ *See* MCI at 89.

at cost when they could purchase wholesale services priced below cost; (2) creating risk-less arbitrage opportunities between the resale of retail services and unbundled elements; and (3) encouraging inefficient carriers to enter the local market. Lincoln believes that the most efficient way of preventing all of these problems is rate rebalancing prior to offering services for resale

VI. Resale restrictions.

Lincoln believes that some restrictions on resale are reasonable because they guarantee the fairness of the competition. Examples of services that qualify for resale restriction are promotions, optional calling plans and special pricing plans.

VII. Avoidable costs.

Lincoln supports USTA in their definitions of avoidable costs as net avoidable costs. The Commission should recognize the existence of costs associated with billing and collection even within wholesale activities. These costs should not be subtracted from the retail prices.

VIII. Frentrup study.

Lincoln strongly urges the Commission to not adopt the results of the CLEC's wholesale discount studies as the nationally valid standards. MCI's wholesale discount studies (Frentrup supplement to MCI's comments) are incorrect. They overestimate the discount factor by loading it with overheads. Lincoln believes that overheads are fixed costs which do not proportionately change with the volume of retail service. Therefore avoided costs do not include overheads. MCI's wholesale discount studies include only

eight companies and do not represent the uniqueness and rich variety of billing, costing, and collecting arrangements of all existing carriers.

IX. Vertical services are to be offered only through resale.

Unbundling of vertical services, such as CLASS and custom calling, should not be prescribed by the Commission. These services are retail services by definition of the Act (Sec. 251(c)(4)). It would be impossible to apply standards intended for unbundled network elements for these services without violating the statutory requirements. According to this section of the Act, vertical services should only be offered for resale at wholesale prices.

X. Rebalancing will assist access charge restructure.

Lincoln agrees with Sprint's belief the states must allow the rebalancing of retail rates in order to cushion the impact of reducing access restructuring.[19/] "Competition necessarily requires rate rebalancing."[20/] Lincoln asks the Commission to encourage the States to begin rebalancing.

XI. Section 251(f)(2) applies to all LEC holding companies with less than 2 percent of the nation's access lines.

Lincoln believes that the ability of a state commission to grant a suspension or modification under Section 251 (f) (2) of the Act should apply to LECs at the holding company, not the operating company level. The clear intent of Section 251 (f) (2) was

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19/ *See* Sprint at 58.

20/ *See* Sprint at 59.

to allow for small- and mid-size companies to seek relief from Section 251 (b) and (c) requirements which would be technically infeasible and unduly economically burdensome. Any measures of these tests should occur at a total company (holding company) level, because measurement at this level determines the ability of the corporation to meet the requirements. This provision was included for companies which do not have economies of scale and scope. To measure company size at the operating company instead of the holding company level would insinuate that the operating company does not have access to the advantages of scale and scope which are possessed by the holding company, which is obviously not the case.

AT&T incorrectly asserts that Section 251 (f) (2) does not apply to Tier 1 LECs such as SNET, Cincinnati Bell and Rochester Telephone.[21/] Rather, Section 251 (f) (2) allows LECs with "fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide" to apply for a suspension or modification from Section 251 (b) and (c) requirements. All three of these companies serve fewer subscriber lines than the specified threshold level. AT&T insinuates that these companies are trying to use a "loophole" in the Act. However, the legislative history clearly indicates that Congress intended that this provision apply to all LECs with less than 2 percent of the nation's access lines. H.R. 1555 contained a suspension or modification provision similar to S. 652, but the provision in H.R. 1555 only applied to LECs serving less than 500,000 access lines nationwide. SNET, Cincinnati Bell, and Rochester Telephone are above

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[21/] *See* AT&T at 92.

this threshold level, and would not have been eligible to apply for a suspension or modification. Because the threshold level for the exemption varied between the House and Senate bills, this is clearly an item that had to be conferenced. Thus, it is incorrect to suggest that the 2 percent threshold was not carefully examined by Congress, and that this provision was not intended to apply to Tier 1 LECs such as those named previously.

XII. Transport and termination, and reciprocal compensation.

Lincoln does not support artificial symmetry in the reciprocal compensation because of the disadvantages stated in the NPRM, ¶237, e.g., different networks have different costs.

Lincoln strongly urges the Commission to recognize the applicability of the cost concept of 252(d)(1) (prices based on cost) to the "reasonable approximation of the additional cost of terminating such calls" language in Section 252(d)(2)(A)(ii).

Lincoln believes the "Bill and Keep" arrangement promoted by MCI[22] is inconsistent with Section 252(d)(2)(A)(i) of the Act and the cost causation principle proposed by the Notice in paragraph 150. The difference in costs of transport and termination between interconnected companies should be taken into account in rate setting arrangements. Those cost differences are the result of variable factors affecting costs across the companies such as geographic and demographic conditions, size of the companies and the design of their networks. Small and mid-size companies without

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[22] *See* MCI at 51-53.

the economy of scope and scale of larger companies can incur higher costs of transport and termination. These companies need to have the ability to recover these costs through proper compensation.

XIII. OSS, databases, Service Order Systems, signaling & SS7.

MCI requests access via electronic bonding to a list of databases it claims are unbundled network elements.[23/] It is unclear how MCI proposes to use these databases. A few of the databases contain call setup and processing information, which is discussed in paragraphs 107-114 of the NPRM. However, the use of a database such as an order processing database does not relate to call setup and processing. Does MCI wish to have access to such a database because it does not wish to construct its own order processing system? Does it wish to electronically transmit orders from its system to an incumbent LECs system? Does it think that the cost of ordering an unbundled network element is separate from purchasing the element itself? For example, does MCI contemplate use of an order processing element every time it orders an unbundled network element? Lincoln contends that the cost of ordering an unbundled network element should be included in the cost of the unbundled network element. The commission should not mandate any access to databases that do not involve call setup and processing until the use of such databases is made clear. The use of the databases requested by MCI may not fit the definition of unbundled network elements.

[23/] *See* MCI at 34

XIV. Operational Support Systems are not network elements.

Operational Support Systems("OSS") were not intended to become unbundled network elements. Unbundling of OSS would give CLEC the ability to purchase separately ILEC arrangements intended to satisfy and attract customers to the ILEC. Unbundling of OSS would seriously damage the ability of ILECs to compete on the basis of service quality.

XV. Database access.

Contrary to MCI's assertion,[24] the Act sets limits on the "databases" and "signaling systems" to which the provisions of Section 251 (c) (3) apply. Specifically, the Act defines the term network element in Section 3 (a) (1) (B) (2) (45) as ". . . a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission and routing. . . ." (emphasis added). For example, MCI cites customer payment records[25] as an example of a non-call processing database to which they should be allowed access. However, as highlighted in the Act's definition of network elements, the databases which are included only cover the provision of a service. Operational support systems data, such as customer payment records, is not necessary to provide a

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[24] *See* MCI at 32.

[25] *See* MCI at 33.

telecommunications service. Nor is access to such databases necessary to provide "information sufficient for billing and collection."

XVI. Mediated access to the ILEC Service Order Systems.

Lincoln does not object to mediated access between systems such as order systems so that other telecommunications carriers can electronically transfer orders However, other telecommunications carriers must have their own order system. The incumbent LEC is not required to provide order and other operational support systems to other carriers. Furthermore, while Lincoln does not object to mediated access to transfer information such as orders, such access is not an unbundled network element, but a service to be provided on a contractual basis

XVII. CPNI issues.

Both MCI and Sprint recognize that access to customer data must conform to Customer Proprietary Network Information (CPNI) requirements contained in Section 222 of the Act.[26/] CPNI is defined in Section 222 (f) (1) as (A) "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier;. . . ." (emphasis added). While Lincoln believes that operational support

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[26/] *See* MCI at 33, Sprint at 17-18.

systems and the data contained within them are not network elements as explained previously, there are also serious questions regarding the compromising of CPNI requirements if access to such databases is allowed. For example, if a customer purchases resold local service from a competing LEC, does that give the competing LEC the right to access technical configuration or toll usage data for that customer? An extensive set of rules would be necessary to determine proper access to CPNI, and extensive partitioning of the data would also be necessary.

XVIII. Mediated access to the ILEC databases and signaling systems.

Lincoln believes that access to databases and signaling systems necessary for call setup and processing should only occur on a mediated basis. Any benefits to be gained by a more competitive environment must be weighed against the great risks and costs of a breach in network security. The Department of Defense (DOD) throughout its comments expresses strong reservations about unmediated access to the network.[27]

XIX. Conclusion.

The Telecommunications Act of 1996 does indeed revolutionize the telecommunications business. In accordance with the Act, the Commission should establish general guidelines and standards enabling the ILECs and CLECs to begin "good faith" negotiations. Comments from MCI and others urge the Commission toward a "rush to judgment" with strict national standards and timelines. Lincoln asserts that because of the far reaching impact of these decisions, a methodical, straight forward,

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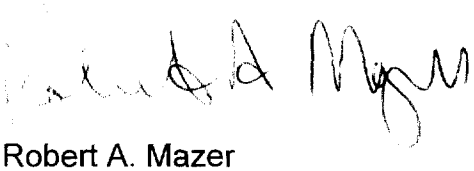
[27] *See* generally DOD comments.

general approach needs to take place. A premature flood of detailed regulations would over burden the ILECs and not allow fair and equitable dialogue between competitors. Lincoln objects to the characterization that it, as an ILEC, "will take advantage of any opportunity the regulatory system allows ... to delay, overcharge, and otherwise disadvantage their competitors".[28/] Lincoln has always and will continue to bargain in good faith and present fair and equitable rates for its services. In the Expanded Interconnection proceedings, Lincoln did object to allowing a competitor into Lincoln's buildings. But once the order was established, Lincoln went about substantiating rates that truly reflected the costs in a reasonable and expeditious fashion that was notable for its forthrightness, honesty and lack of contention at the Commission. Lincoln looks forward to greeting its new partners in providing service to the local customer.

Respectfully submitted,



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28/ *See* MFS at iii.